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EMPHASYS MEDICAL INC

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Attorney's Docket No.: 17075-002001 / 0101

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Thirumani Sabanathan
Serial No. : 09/762,692
Filed : March 3, 1998
Title : OCCLUSION DEVICE

Art Unit : 3738
Examiner : Unknown

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REVOCATION AND NEW POWER OF ATTORNEY

Under 37 CFR §3.73(b), Emphasys Medical Inc., a Delaware corporation, certifies that it is the assignee of 100% of the right, title and interest in the patent application identified above by virtue of:

☒ A chain of title from the inventor(s) of the patent application identified above, to the current assignee as shown below. Copies of the assignments or other documents in the chain of title are attached.

The undersigned has reviewed all the documents in the chain of title of the patent application identified above and, to the best of undersigned's knowledge and belief, title is in the assignee identified above.

The undersigned, whose title is supplied below, is empowered to act on behalf of the assignee.

The undersigned, acting on behalf of the assignee, hereby revokes all powers of attorney previously granted in the application and appoints:

Fred C. Hernandez
Reg. No. 41,832
FISH & RICHARDSON P.C.
12390 El Camino Real
San Diego, California 92130

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EMPHASYS MEDICAL INC

PAGE 03/03

Applicant : Thirunani Sabanathan
Serial No. : 09/762,692
Filed : March 3, 1998
Page : 2 of 2
REVOCATION AND NEW POWER OF ATTORNEY

Attorney's Docket No.: 17075-002001 / 0101

with full power of substitution and revocation, to prosecute the application and to transact all business in the United States Patent and Trademark Office connected therewith.

All correspondence regarding the application should be sent to:

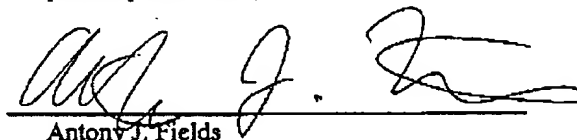
PTO Customer Number: 20985

Direct all telephone calls to Fred C. Hernandez, Reg. No. 41,832, at telephone number (858) 678-5070.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Respectfully submitted,

Date: 2/8/06



Antony J. Fields

Title: Vice President, Research & Development
Emphasys Medical, Inc.

Fred C. Hernandez
Fish & Richardson P.C.
12390 El Camino Real
San Diego, California 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099
Email: fhernandez@fr.com
10596282.doc

AGREEMENT

This Agreement (this "Agreement") is made and entered into effective as of June 6, 2000 ("the Effective Date") by and between

The Foundry, LLC, a Delaware limited liability corporation ("Foundry"),

Bradford Hospitals NHS Trust, a Trust organized and subsisting under the laws of the United Kingdom, of Duckworth Lane, Bradford, West Yorkshire, BD9 6RY, GB ("NHS Bradford"), and

Thirumani Sabanathan, a United Kingdom citizen of 2A The Knoll, Calverley, Leeds, LS28 5FB, GB ("Sabanathan").

RECITALS

NHS Bradford and Sabanathan are between them the owner of the Technology (as defined below), and NHS Bradford and Sabanathan desire to assign and transfer to Foundry all of their respective right, title and interest in and to the Technology, and other related rights.

NOW THEREFORE, the parties hereby agree as follows:

1. Definition of Assigned Assets. As used herein, "Assigned Assets" means:

(a) The Technology, which is defined as information, trade secrets, know-how, intellectual property rights, clinical information, prototypes, or test data related to devices, systems, methods, or procedures for bronchial occlusion for isolation of diseased sections of lungs. Any information, prototypes, or other work in the field of this procedure performed directly by the late Dr. Sabanathan or by any associates, consultants, or related companies also constitutes the Technology.

(b) All worldwide patents, patent applications, patent rights, copyrights, copyright registrations, moral rights, trade secrets, know-how, mask work rights, rights in trade dress and packaging, and goodwill directly relating to the Technology, whether arising under the laws of the United Kingdom, the United States of America or the laws of any other state, country or jurisdiction existing at the date of this Agreement. This includes the pending United Kingdom patent application number 9708681.3 and the international application number PCT/GB98/00652 ("the Applications") and any additional, continuation, continuation-in-part, or division thereof or any substitute application therefore, any reissue, extension, or patent term extension of any such patent, and any foreign counterpart of the foregoing.

(c) All documentation, drafts, papers, designs, schematics, diagrams, models, prototypes, source and object code (in any form or format and for all hardware platforms), computer-stored data, diskettes, manuscripts and other items describing all or any part of the Technology or any information related thereto or in which all or any part of the Technology, any intellectual property right or such information is set forth, embodied, recorded or stored existing at the date of this Agreement ("Information") but specifically excluding any Information that is in the possession of Sabanathan which it is hereby agreed by both the Foundry and by NHS Bradford that Sabanathan shall be entitled to retain.

2. Assignment.

(a) Subject to paragraph 2(b) NHS Bradford and Sabanathan shall sell, assign, transfer, release, quitclaim and convey to Foundry, NHS Bradford's and Sabanathan's entire right, title and interest in and to each and all of the Assigned Assets. Save that it is specifically agreed by Foundry that Sabanathan shall be entitled to publish or commission the publishing of Dr. Sabanathan's work notwithstanding that it does or may include the use of intellectual property rights contained in the Assigned Assets and she shall be entitled to keep copies of any documentation drafts papers or disks in her possession to enable her to do so. Without limiting the foregoing, NHS Bradford and Sabanathan agrees to assign all their respective right, title and interest in and to the Applications; and all their respective right to file or prosecute patent applications covering the Assigned Assets in any jurisdiction in the world. Foundry acknowledges that it is aware that the period within which national/regional phase entry of international application no PCT/GB98/00652 must normally be effected may have passed without such phases having been entered and therefore such application may not exist as an asset unless the Entitlement Proceedings (as defined below) are successful and the application is thereafter permitted to proceed in the name of Sabanathan.

(b) If Foundry is in breach of its obligations under paragraphs 6 or 7 of this Agreement and in the case of paragraph 6 has not cured such breach within thirty (30) days of written notification thereof by NHS Bradford and/or Sabanathan and in the case of paragraph 7 has not taken reasonable steps to cure such breach within such 30 day period, it shall upon receipt of notice in writing from NHS Bradford and/or Sabanathan transfer and convey back to NHS Bradford and Sabanathan jointly in equal shares all its right title and interest in the Assigned Assets.

3. Reports. NHS Bradford agrees that it will, within thirty (30) days of the Effective Date hereof, arrange for the preparation and delivery to Foundry (and copied to Sabanathan) of one or more written reports describing in reasonable detail the efforts undertaken and the results obtained, with respect to any patenting, prototyping, testing and other development work performed by or on behalf of NHS Bradford with respect to the Assigned Assets. These Report(s) shall be treated as confidential information, to protect the patentability of any information contained therein.

4. NHS Bradford Warranties.

(a) NHS Bradford represents and warrants to Foundry to the best of its knowledge and belief that Dr. Sabanathan was the only inventor and/or author of, and that NHS Bradford and Sabanathan between them own, and can grant exclusive worldwide right, title and interest in and to, each of the Assigned Assets and that none of the Assigned Assets are subject to any dispute, claim, prior license or other agreement, assignment, lien or rights of any third party, or any other rights that might interfere with Foundry's use, or exercise of ownership of, any Assigned Assets (save as aforesaid in relation to the said international application). NHS Bradford further represents and warrants to Foundry to the best of its knowledge and belief that the Assigned Assets are free of any claim by any third party of any kind in or to any of the Assigned Assets.

(b) Sabanathan represents and warrants to Foundry to the best of her knowledge and belief that Dr. Sabanathan was the only inventor and/or author of, and that NHS Bradford and Sabanathan between them own, and can grant exclusive worldwide right, title and interest in and to, each of the Assigned Assets and that none of the Assigned Assets are subject to any dispute, claim, prior license or other agreement, assignment, lien or rights of any third party, or any other rights that might interfere with Foundry's use, or exercise of ownership of, any Assigned Assets (save as aforesaid in relation to the said international application). Sabanathan further represents and warrants to Foundry to the best of her knowledge and belief that the Assigned Assets are free of any claim by any third party of any kind in or to any of the Assigned Assets.

(c) NHS Bradford certifies that NHS Bradford has no outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement, or that would preclude NHS Bradford from complying with the provisions hereof, and further certifies that NHS Bradford will not enter into any such conflicting Agreement in the area of the Assigned Assets during the term of this Agreement.

(d) Sabanathan certifies that Sabanathan has no outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement, or that would preclude Sabanathan from complying with the provisions hereof, and further certifies that Sabanathan will not enter into any such conflicting Agreement in the area of the Assigned Assets during the term of this Agreement.

(e) NHS Bradford and Sabanathan agree to promptly commence proceedings ("Entitlement Proceedings") in the United Kingdom Patent Office to have the matter of their respective entitlements to the Applications determined by the comptroller of the Patent Office. NHS Bradford and Sabanathan have entered an agreement to that effect dated _____ and, in the event that Sabanathan is determined to be entitled to the rights in the Applications, and in consideration of NHS Bradford not disputing the Entitlement Proceedings, Sabanathan has agreed to assign an equal share in the rights in the Applications to NHS Bradford.

(f) NHS Bradford and Sabanathan covenant that they shall perfect the assignment ("Perfection") agreed by them in this Agreement as soon as practicable within thirty days of final conclusion of the Entitlement Proceedings by executing an Assignment as set out in Schedule I hereto or in such other form as are agreed between the parties hereto.

5. Further Assurances.

(a) NHS Bradford and Sabanathan further agree that, after such Perfection, they will execute one or more patent assignments covering the Assigned Assets, to be filed with the relevant authorities, and will, promptly upon request of Foundry, or any of its successors or assigns, (and at the sole cost of Foundry or of its successors or assigns as the case may be) execute and deliver, without further compensation of any kind, any power of attorney, assignment or amendment to assignment, application for copyright, patent or other intellectual property right protection, or any other papers which may be necessary or desirable to fully secure to Foundry, its successors and assigns, all right, title and interest in and to each of the Assigned Assets, and to provide all reasonable cooperation and assistance in the prosecution of any opposition proceedings involving said rights and any adjudication of the same. Further, NHS Bradford and Sabanathan agree (subject to paragraph 2(b)) never to assert any claims, rights or moral rights in or to any of the Assigned Assets.

(b) In the event that Foundry is unable, after reasonable notice to NHS Bradford or Sabanathan, for any reason whatsoever to secure NHS Bradford's or Sabanathan's signature to any document NHS Bradford or Sabanathan is required to execute pursuant to the foregoing, NHS Bradford and Sabanathan hereby irrevocably designate and appoint Foundry and its duly authorized officers and agents, as its agents and attorneys-in-fact to act for and in its behalf and instead of NHS Bradford and Sabanathan, to execute and file any such document and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by NHS Bradford or Sabanathan, as the case may be.

(c) As of the Effective Date hereof, Foundry shall have the sole right to make all decisions relating to the prosecution or maintenance of any patents covering the Assigned Assets, any and all expenses incurred in connection therewith shall be the sole responsibility of Foundry and shall pay Sabanathan's costs of entering into this Agreement and her agreement with Bradford NHS up to a maximum of £1,200 plus VAT payable within 30 days of the Effective Date.

(d) Foundry agrees in addition to the compensation set out in paragraph 6 to pay all Sabanathan's costs and expenses (including legal and other professional costs) properly incurred in pursuing the Entitlement Proceedings. Such payment shall be made on an indemnity basis within 14 days of application by Sabanathan.

6. Compensation.

(a) In consideration of the assignment of the Assigned Assets and the other terms and conditions hereof, Foundry will pay to NHS Bradford's Solicitors, DLA, formerly known as Dibb Lupton Alsop, on behalf of both NHS Bradford and Sabanathan for distribution as agreed between them, a total of the amount specified in paragraph 6 (b) ("the Sales Payment") below at the time indicated therein and \$30,000 United States Dollars within 30 Days of the Effective Date.

(b) The Sales Payment shall be payable within three calendar months of the end of the sixth full fiscal year of Foundry following the date of the first sale of product following the first United States Food and Drug Administration approval of the product. The Sales Payment shall equal 3% of the value of net sales in countries in which a patent is granted pursuant to the Applications of Foundry and/or of any licensee and/or sub-licensee of Foundry or any successor in title of Foundry ("the Sellers") of product falling within the terms of any US patent granted pursuant to the Applications for sales during the period of the fourth, fifth, and sixth full fiscal years of Foundry following the date of the first sale of product following the first United States Food and Drug Administration approval of the product unless such percentage amounts to less than US\$10,000, in which event the Sales Payment shall be zero. In any event, the Foundry shall supply NHS Bradford and Sabanathan with a statement of the sales in the period for the Sales Payment within the same period as for payment of the Sales Payment, if any, and NHS Bradford and Sabanathan shall have the right to audit such statement of sales (which audit shall be at the cost of Foundry if the Sales Payment actually made shall be 5% or more below the Sales Payment which should have been made in accordance with the provisions hereof). Sales between any of the Sellers and any associated and/or affiliated entities of such Seller shall be deemed to have been made at an arm's length price (if more than the actual price) for the purpose of the calculation of the Sales Payment.

(c) In the event that a European patent is secured on the basis of international application number PCT/GB98/00652, the Sales Payment payable under paragraph 6 (b) above shall additionally be in respect of sales in countries capable of protection under such patent, but not protected through the choice of Foundry. For the avoidance of doubt, Foundry shall not abandon any patent protection achieved in respect of the United States, United Kingdom, Germany and France before all payments under paragraph 6 (b) above have been duly made without first notifying Sabanathan and NHS Bradford and giving each of them reasonable opportunity to take over prosecution or maintenance of such protection in respect of such countries, but without otherwise affecting the terms of this Agreement.

(d) In consideration of the Report(s) described in Section 3 above, Foundry will pay the individuals responsible for preparation of the Report(s) a total of no more than \$3,000 United States Dollars within thirty (30) days of receipt of the Report(s).

(c) In order to secure the making of the Sales Payment on the due date and the obligations under paragraph 7 below:

(i) Foundry shall not assign or transfer to any third party the benefit of this Agreement and/or any of the Assigned Assets and/or any of the patents granted pursuant to any of the Applications without first obtaining from such third party a binding obligation to NHS Bradford and Sabanathan to observe and perform the provisions and obligations set out herein and in particular (but without limitation) the obligation to make the Sales Payment as calculated and provided under paragraph 6 above and the obligations under paragraph 7 below; and

(ii) Foundry grants to each of NHS Bradford and Sabanathan, jointly and severally, an irrevocable power of attorney to execute such assignments and other documents as necessary to revest all rights assigned to Foundry by this Assignment and all further rights derived therefrom into the joint names of NHS Bradford and Sabanathan, which power of attorney rights may be exercised only upon the failure of Foundry (or its assignees or transferees) to make the Sales Payment and/or to comply with Section 7.

7. Branding

(a) Foundry agrees that it will and will use all reasonable endeavours to procure that the Sellers (as defined in paragraph 6) will only sell, market and otherwise exploit or promote products covered by the Applications or substantially evolving from or deriving from any of the devices covered by the Applications under a name or title which prominently features the name "Sabanathan" as part of it and which thereby recognises the Inventor.

(b) Without prejudice to paragraph 7(a) Foundry further agrees to use its reasonable endeavours to procure that any device or product which substantially derives or has evolved from any of the Technology, either solely or jointly with others bears the name "Sabanathan" as part of its title when marketed promoted sold or exploited.

8. Miscellaneous

(a) Counterparts; Governing Law. This Agreement may be executed in any number of counterparts, each of which will constitute an original, and all of which will together constitute this one Agreement. This Agreement will be governed exclusively by English Law or, with respect to issues relating to rights under any patent, the patent laws of the jurisdiction in which the patent is pending or from which it issued.

(b) Entire Agreement. This Agreement constitutes the entire understanding and agreement between Foundry, on the one hand, and NHS Bradford and Sabanathan, on the other hand, regarding the subject matter herein, and supersedes any and all other agreements or understandings of the parties regarding such subject matter.

(c) Amendments and Waivers. Any term of this Agreement may be amended or waived only with the written consent of the parties.

(d) Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below, or as subsequently modified by written notice.

(e) Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(g) Advice of Counsel. EACH PARTY ACKNOWLEDGES THAT, IN EXECUTING THIS AGREEMENT, SUCH PARTY HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND HAS READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

(h) Payments. All payments due hereunder shall be made in U.S. Dollars (\$), and shall be payable net thirty (30) days following the due date except as noted.

(i) Foundry hereby covenants with NHS Bradford and Sabanathan:

to indemnify each of NHS Bradford and Sabanathan and hold each of NHS Bradford and Sabanathan harmless in connection with any claim brought by a third party in relation to any liability caused by use of a lung occluder in accordance with the Applications or in relation to the Technology in any way; and

to indemnify NHS Bradford and Sabanathan and to hold each of NHS Bradford and Sabanathan harmless in connection with any claim from any person in relation to it having made and prosecuted the Applications and/or arising out of the Entitlement Proceedings

Schedule I

ASSIGNMENT AGREEMENT

This Assignment Agreement (this "Assignment") is made and entered into effective as of _____ by and between

The Foundry, LLC, a Delaware limited liability corporation ("Foundry"),

Bradford Hospitals NHS Trust, a Trust organized and subsisting under the laws of the United Kingdom, of Duckworth Lane, Bradford, West Yorkshire, BD9 6RY, GB ("NHS Bradford"), and

Thirumani Sabanathan, a United Kingdom citizen of 2A The Knoll, Calverley, Leeds, LS28 5FB, GB ("Sabanathan").

RECITALS

The parties hereto entered an agreement (the "Agreement") dated June _____ 2000 in which NHS Bradford and Sabanathan agreed to assign their respective right, title and interest in and to Technology (as defined in the Agreement), and other related rights, to Foundry.

NOW THEREFORE, the parties hereby agree as follows:

1. Definition of Assigned Assets. As used herein, "Assigned Assets" means:

(a) The Technology, which is defined as information, trade secrets, know-how, intellectual property rights, clinical information, prototypes, or test data related to devices, systems, methods, or procedures for bronchial occlusion for isolation of diseased sections of lungs. Any information, prototypes, or other work in the field of this procedure performed directly by the late Dr. Sabanathan or by any associates, consultants, or related companies also constitutes the Technology.

(b) All worldwide patents, patent applications, patent rights, copyrights, copyright registrations, moral rights, trade secrets, know-how, mask work rights, rights in trade dress and packaging, and goodwill directly relating to the Technology, whether arising under the laws of the United Kingdom, the United States of America or the laws of any other state, country or jurisdiction existing at the date of this Agreement. This includes the pending United Kingdom patent application number 9708681.3 and the international application number PCT/GB98/00652 ("the Applications") and any additional, continuation, continuation-in-part, or division thereof or any substitute application therefore, any reissue, extension, or patent term extension of any such patent, and any foreign counterpart of the foregoing.

(c) All documentation, drafts, papers, designs, schematics, diagrams, models, prototypes, source and object code (in any form or format and for all hardware platforms), computer-stored data, diskettes, manuscripts and other items describing all or any part of the Technology or any information related thereto or in which all or any part of the Technology, any intellectual property right or such information is set forth, embodied, recorded or stored existing at the date of this Agreement.

2. In consideration of the Agreement, and subject to its terms which are hereby incorporated in this Assignment, NHS Bradford and Sabanathan hereby sell, assign, transfer, release, quitclaim and convey to Foundry, NHS Bradford's and Sabanathan's entire right, title and interest in and to each and all of the Assigned Assets. Without limiting the foregoing, NHS Bradford and Sabanathan hereby assign all their respective right, title and interest in and to the Applications; and all their respective right to file or prosecute patent applications covering the Assigned Assets in any jurisdiction in the world.

IN WITNESS WHEREOF, the undersigned have executed this Assignment effective as of the date and year first above written.

THE FOUNDRY, LLC

By: _____

Name: Hanson S. Gifford, IIITitle: PresidentAddress: The Foundry, LLC604-D Fifth Avenue,Redwood City, CA 94063USA**BRADFORD HOSPITALS NHS TRUST**

By: _____

Name: _____

Title: _____

Address: Duckworth LaneBradfordWest Yorkshire, BD9 6RYUnited Kingdom**THIRUMANI SABANATHAN**

By: _____

Address: 2A The Knoll,Calverley,Leeds,West Yorkshire, LS28 5FBUnited Kingdom

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date and year first above written.

THE FOUNDRY, LLC

By: _____

Name: Hanson S. Gifford, IIITitle: PresidentAddress: The Foundry, LLC
604-D Fifth Avenue,
Redwood City, CA 94063
USA

BRADFORD HOSPITALS NHS TRUST

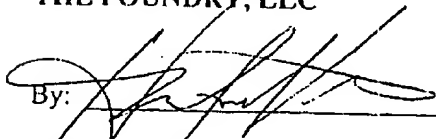
By: David JacksonName: DAVID JACKSONTitle: CHIEF EXECUTIVEAddress: Duckworth Lane,
Bradford,
West Yorkshire, BD9 6RY
United Kingdom

THIRUMANI SABANATHAN

By: Thirumani SabanathanAddress: 2A The Knoll,
Calverley,
Leeds,
West Yorkshire, LS28 5FB
United Kingdom

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date and year first above written.

THE FOUNDRY, LLC

By: 
Name: Hanson S. Gifford, III
Title: President
Address: The Foundry, LLC
604-D Fifth Avenue,
Redwood City, CA 94063
USA

BRADFORD HOSPITALS NHS TRUST

By: _____
Name: _____
Title: _____
Address: Duckworth Lane,
Bradford,
West Yorkshire, BD9 6RY
United Kingdom

THIRUMANI SABANATHAN

By: _____
Address: 2A The Knoll,
Calverley,
Leeds,
West Yorkshire, LS28 5FB
United Kingdom

NHS Signed bradford foundry agreement Signed bradford foundry agreement -10-
The Foundry, LLC

Confidential to

SUPPLEMENT TO AGREEMENT OF JUNE 6, 2000

This Supplement is made and entered into effective as of January 11th, 2001, by and among:

The Foundry, LLC, a Delaware limited liability company ("The Foundry"),

Emphasys Medical, Inc., a Delaware corporation ("Emphasys"),

Bradford Hospitals NHS Trust, a Trust organized and subsisting under the laws of the United Kingdom ("NHS Bradford"), and

Thirumani Sabanathan, an individual citizen of the United Kingdom ("Sabanathan," and together with NHS Bradford, the "Assignors"),

and is intended to supplement that certain Agreement dated as of June 6, 2000, by and between The Foundry and the Assignors (the "Agreement").

RECITALS

WHEREAS, The Foundry and the Assignors have previously entered into the Agreement;

WHEREAS, The Foundry has assigned to Emphasys, and Emphasys has assumed from The Foundry, all of The Foundry's rights and obligations under the Agreement to Emphasys; and

WHEREAS, the parties desire to supplement the Agreement to clarify certain rights of the parties;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties agree that the Agreement is hereby amended as follows:

1. Enforcement of Patents.

(a) Emphasys shall have the sole right to enforce all rights pertaining to the Assigned Assets (including, without limitation, all patent rights, copyrights, trade secrets and similar intellectual property rights) in its own name or, if required by law, jointly with Assignors. Any such enforcement shall be at Emphasys' own expense and in its sole and absolute discretion.

(b) The parties agree that the Assignors shall not be obligated (nor have the right) to enforce any rights pertaining to the Assigned Assets; provided, however, that the Assignors agree to provide such assistance and cooperation to Emphasys as may be reasonably requested in connection with the enforcement by Emphasys of such rights save that for the avoidance of doubt it shall not be reasonable to request access to Sabanathan's property or the late Dr Sabanathan's private office or the Information as defined in the Agreement. Emphasys agrees to

SEC/Clients/Sabanathan/cdoc/amending agreement.V2\1411

reimburse the Assignors for any reasonable costs and expenses incurred in providing such assistance.

(c) The parties agree that the Assignors shall not be obligated to contribute any funds or share any costs incurred in the enforcement of any rights pertaining to the Assigned Assets.

(d) Emphasys shall be entitled to all damages, profits, awards or other funds of any nature or source recovered as a result of the enforcement of any rights pertaining to the Assigned Assets save that where any such damages profits awards or other fund of any nature or source ("receipts") are recovered during or relate to the period during which the Sales Payment under Clause 6 (b) of the Agreement applies ("the Relevant Period") or constitute damages for lost revenue or profit during the Relevant Period, the Sales Payment shall be payable on the value of such receipts.

2. Except as expressly set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Supplement, effective as of the date first set forth above.

THE FOUNDRY, LLC

By: [Signature]
Title: President

EMPHASYS MEDICAL, INC.

By: [Signature]
Title: Vice President, Operations

BRADFORD HOSPITALS NHS TRUST

By: [Signature]
Title: Chief Executive

THIRUMANI SABANATHAN

[Signature]
(signature)

SEC/Clients/Sabanathan/cdoc(amending agreement.V2)1411

ASSIGNMENT DEED

This Assignment Deed (this "Assignment") is made and entered into effective as of 2001 by and between

The Foundry, LLC, a Delaware limited liability company, of 604-D Fifth Avenue, Redwood City, CA 94063 USA ("The Foundry"),

Emphasys Medical, Inc., a Delaware corporation, of 2686 Middlefield Road, Redwood City, CA 94063 USA ("Emphasys"),

Bradford Hospitals NHS Trust, a Trust organized and subsisting under the laws of the United Kingdom, of Duckworth Lane, Bradford, West Yorkshire, BD9 6RY, GB ("NHS Bradford"), and

Thirumani Sabanathan, a United Kingdom citizen of 2A The Knoll, Calverley, Leeds, LS28 5FB, GB ("Sabanathan," and together with NHS Bradford, the "Assignors").

RECITALS

WHEREAS, The Foundry and the Assignors have previously entered an agreement (the "Agreement") dated June 6, 2000 in which the Assignors agreed to assign their respective right, title and interest in and to Technology (as defined in the Agreement), and other related rights, to The Foundry.

WHEREAS, pursuant to a Supplement to the Agreement dated January 19, 2001, The Foundry has assigned to Emphasys, and Emphasys has assumed from The Foundry, all of The Foundry's rights and obligations under the Agreement to Emphasys; and

WHEREAS, the parties desire to perfect the Agreement;

NOW THEREFORE, the parties hereby agree as follows:

1. Definition of Assigned Assets. As used herein, "Assigned Assets" means:

(a) The Technology, which is defined as information, trade secrets, know-how, intellectual property rights, clinical information, prototypes, or test data related to devices, systems, methods, or procedures for bronchial occlusion for isolation of diseased sections of lungs. Any information, prototypes, or other work in the field of this procedure performed directly by the late Dr. Sabanathan or by any associates, consultants, or related companies also constitutes the Technology.

(b) All worldwide patents, patent applications, patent rights, copyrights, copyright registrations, moral rights, trade secrets, know-how, mask work rights, rights in trade dress and packaging, and goodwill directly relating to the

Technology, whether arising under the laws of the United Kingdom, the United States of America or the laws of any other state, country or jurisdiction existing at the date of this Agreement. This includes the pending United Kingdom patent application number 9708681.3 and the international application number PCT/GB98/00652 ("the Applications") and European Patent Application number EP 01201457.7 and any additional, continuation, continuation-in-part, or division thereof or any substitute application therefore, any reissue, extension, or patent term extension of any such patent, and any foreign counterpart of the foregoing.

(c) All documentation, drafts, papers, designs, schematics, diagrams, models, prototypes, source and object code (in any form or format and for all hardware platforms), computer-stored data, diskettes, manuscripts and other items describing all or any part of the Technology or any information related thereto or in which all or any part of the Technology, any intellectual property right or such information is set forth, embodied, recorded or stored existing at the date of this Agreement.

2. In consideration of the Agreement, and subject to its terms which are hereby incorporated in this Assignment, NHS Bradford and Sabanathan hereby sell, assign, transfer, release, quitclaim and convey to Emphasys, NHS Bradford's and Sabanathan's entire right, title and interest in and to each and all of the Assigned Assets. Without limiting the foregoing, NHS Bradford and Sabanathan hereby assign all their respective right, title and interest in and to the Applications; and all their respective right to file or prosecute patent applications covering the Assigned Assets in any jurisdiction in the world.

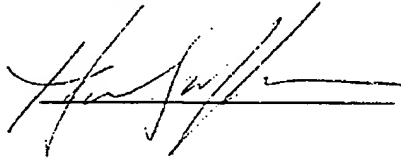
[remainder of page intentionally left blank -- signature page follows]

IN WITNESS of which this Assignment has been executed as a Deed and delivered the day and year first written before.

SIGNED as a DEED by: THE FOUNDRY, LLC

acting by: Hanson S. Gifford, III
PRESIDENT

and:



acting under the authority of such company in accordance with the laws of the territory in which it is incorporated.

SIGNED as a DEED by: BRADFORD HOSPITAL NHS TRUST

acting by: David RH Jackson David RH Jackson, Chief Executive

and:



Dr RE Dugdale, Director of
Operations Clinical & Scientific
Support Services Division


SIGNED as a DEED by the said THIRUMANI SABANATHAN

in the presence of:

name: Susan Clark

Occupation: SOLICITOR

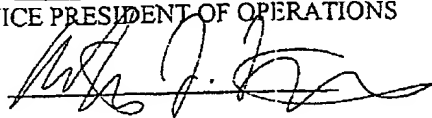
Address: 128 Sunbridge Road
Bradford


20/7/01.

SIGNED as a DEED by: EMPHASYS MEDICAL, INC.

acting by: Antony J. Fields
VICE PRESIDENT OF OPERATIONS

and:



acting under the authority of such company in accordance with the laws of the territory in which it is incorporated.